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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

B5

[redacted]

DATE: JAN 19 2012 OFFICE: NEBRASKA SERVICE CENTER

[redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as an alien of exceptional ability in the sciences. The petitioner seeks employment as an urban forester at the University of California, San Diego (UCSD). The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner does not qualify for classification as an alien of exceptional ability in the sciences or as a member of the professions holding an advanced degree. The director also found that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits a statement and supporting exhibits.

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. –
>
> > (A) In General. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer –
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The first issue under consideration is whether the petitioner qualifies for the immigrant classification he seeks. The petitioner filed the Form I-140 petition on September 3, 2009. In an accompanying statement, the petitioner specified that he "claim[s] exceptional ability in the sciences." His description of the evidence submitted, however, also implied eligibility for classification as a member of the professions holding an advanced degree.

The U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 204.5(k) includes the following relevant clauses:

(2) Definitions. As used in this section:

Advanced degree means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.

Exceptional ability in the sciences, arts, or business means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business.

Profession means one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation.

(3) Initial evidence. The petition must be accompanied by documentation showing that the alien is a professional holding an advanced degree or an alien of exceptional ability in the sciences, the arts, or business.

(i) To show that the alien is a professional holding an advanced degree, the petition must be accompanied by:

(A) An official academic record showing that the alien has an United States advanced degree or a foreign equivalent degree; or

(B) An official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the alien has at least five years of progressive post-baccalaureate experience in the specialty.

(ii) To show that the alien is an alien of exceptional ability in the sciences, arts, or business, the petition must be accompanied by at least three of the following:

(A) An official academic record showing that the alien has a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to the area of exceptional ability;

(B) Evidence in the form of letter(s) from current or former employer(s) showing that the alien has at least ten years of full-time experience in the occupation for which he or she is being sought;

> (C) A license to practice the profession or certification for a particular profession or occupation;
>
> (D) Evidence that the alien has commanded a salary, or other remuneration for services, which demonstrates exceptional ability;
>
> (E) Evidence of membership in professional associations; or
>
> (F) Evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations.
>
> (iii) If the above standards do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence to establish the beneficiary's eligibility.

The petitioner claimed to have satisfied all six of the regulatory standards under 8 C.F.R. § 204.5(k)(3)(ii). He also claimed more than five years of progressive post-baccalaureate experience.

The director, in denying the petition, focused on the petitioner's academic background. In the August 6, 2010 decision, the director stated:

> In determining whether the petitioner's Higher National Diploma from the Federal Ministry of Education, Science and Technology is a foreign equivalent degree, we have reviewed the Electronic Database for Global Education (EDGE) created by the American Association of Collegiate Registrars and Admissions Officers. . . .
>
> EDGE provides that the Higher National Diploma issued in Nigeria represents attainment of a level of education comparable to two years of university study in the United States. Additionally, it says:
>
> > While the Higher National Diploma represents a high level of expertise, it is not comparable to a bachelor's degree in a technical field. . . . The Higher National Diploma should not be considered comparable to a US bachelor's degree.
>
> Thus, it cannot be concluded that the petitioner has a Bachelor's degree or foreign equivalent degree. Although the petitioner provided evidence that he is a member of the Society of American Foresters, the International Society of Arboriculture, and the Society of Municipal Arborists, the record lacks evidence that any of these groups require a Bachelor's degree as criteria for membership.

The above discussion does not fully address the petitioner's claim of exceptional ability in the sciences. The petitioner claimed to satisfy all six of the regulatory criteria at 8 C.F.R. § 204.5(k)(3)(ii), but he

need satisfy only three of them to qualify as an alien of exceptional ability in the sciences. Issues with his education and memberships concern only two of the six criteria, and therefore the director's assertions, even if entirely true, do not rule out a finding of exceptional ability in the sciences.

Review of the record indicates that the petitioner has submitted acceptable evidence of more than ten years of full-time experience in the occupation, certification for the occupation, and recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations. Thus, the petitioner has satisfied the regulatory standards at 8 C.F.R. §§ 204.5(k)(3)(ii)(B), (C) and (F). As such, the petitioner qualifies for classification as an alien of exceptional ability in the sciences, and the AAO will withdraw the director's contrary finding.

Much of the petitioner's appeal centers on a defense of his claimed academic degree. This defense would have to succeed in order for the petitioner to qualify for classification as a member of the professions holding the defined equivalent of an advanced degree. Given the favorable determination regarding exceptional ability, however, the advanced degree issue is moot. The AAO need not discuss, in detail, the director's findings about the petitioner's degree or the petitioner's response to those findings.

The AAO now turns to the issue of the petitioner's eligibility for the national interest waiver. The USCIS regulation at 8 C.F.R. § 204.5(k)(4)(ii) requires that a petitioner seeking to apply for the exemption must submit Form ETA-750B, Statement of Qualifications of Alien (or corresponding sections of ETA Form 9089), in duplicate. The record does not contain this required document, and therefore the petitioner has not properly applied for the national interest waiver. The director, however, did not raise this issue. The AAO will, therefore, review the matter on the merits rather than leave it at a finding that the petitioner did not properly apply for the waiver.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service [now USCIS] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation (*NYSDOT*), 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, the petitioner must show that the alien seeks employment in an area of substantial intrinsic merit. Next, the petitioner must show that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available United States worker having the same minimum qualifications.

While the national interest waiver hinges on prospective national benefit, the petitioner must establish that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The intention behind the term "prospective" is to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

The AAO also notes that the regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

The petitioner, in his introductory statement, explained the basis for his claim of eligibility for the national interest waiver:

> Beginning with my employment as the first [redacted] in August, 2005, I initiated the institution's revamping of its ecological resource management strategy, geared toward the preservation of its green assets – specifically, the campus' circa 230,000-tree urban forest. First off, I co-wrote, with two colleagues, a trail-blazing [redacted] February 2006. . . .
>
> Building on the foundation laid with the ground-breaking Introduction to [redacted], I completed . . . [redacted]s first ever [redacted] . . . which provides a framework for the *sustainable management* – including continuing enhancement – of the university's urban forest resource by instituting and implementing specific cost effective policies. . . . The professional management of [redacted] rich urban forest . . . is crucial to the all-round well-being of present and future generations of California's dwellers and visitors. . . .

> During the drafting of the California Climate Action Registry's (California Registry) Urban Forest Project Reporting Protocol, I served as a Stakeholder Committee member. . . .
>
> The California Registry's Urban Forest Project Reporting Protocol provides guidance to account for and report greenhouse gas (GHG) emission reductions associated with a planned set of tree planting and maintenance activities to permanently increase carbon storage in trees. . . .
>
> Through its Climate Action Reserve program (the Reserve), the California Registry supplies protocols . . . for quantifying GHG emission reductions (or offsets). In addition, it oversees and accredits independent third-party verifiers, and provides a web-based publicly accessible offset registration, serialization, and tracking service.

(Evidentiary citations omitted). The intrinsic merit of the occupation of forestry is not in dispute. The petitioner must, however, establish that his occupation is national in scope, and that his contributions to his field warrant the special benefit of the national interest waiver.

The director, in denying the petition, stated:

> There is nothing in the record to demonstrate that the activities of an Urban Forester in a specific region would be national in scope. The occupation of forestry, while commendable, would provide a benefit so attenuated at the national level as to be negligible. While the occupation of forestry has obvious intrinsic value, the work of a single forester within a specific region could not be considered sufficiently in the national interest for the purposes of this provision of the Act.

The director concluded that the petitioner's "impact would be regional, not national."

On appeal, the petitioner states:

> As the *pioneer* Urban Forester at the[redacted] and the manager of the university's 230,000-tree campus forest, my visionary enterprise started [redacted] urban forestry program from scratch. I have applied, since 2005, advanced principles of forestry to the maintenance and improvement of a ***significant national environmental resource*** – **[redacted] urban forest which enormously *benefits both the region and the nation* with the removal, by its estimated 230,000 trees, of *64,400 tons of carbon dioxide and 1.38 million pounds of pollutants from the atmosphere annually*.** Furthermore, ***the campus forest at [redacted] intercepts 483 million gallons of rainwater per year.*** This translates to: (a) less storm water runoff and, consequently, less money spent on storm water control, (b) reduced soil erosion and water pollution, and (c) ***cleaner (forest-soil-filtered***

> ***storm water discharges to nearby Areas of Special Biological Significance (ASBS) in the Pacific Ocean.***

(Emphasis in original; evidentiary citations omitted.) The petitioner has not shown that the above benefits are significant on a national level. Materials submitted by the petitioner indicate that the United States produced 5.75 billion metric tons of carbon dioxide emissions in 2009 – about one-fifth of the world's total emissions. The trees on [redacted] 1,200-acre campus remove, according to the petitioner, about one one-thousandth of one percent of those emissions.

Furthermore, the benefits listed above are the products not of the occupation of forestry, but of the trees themselves. The record shows that the trees on what is now the [redacted] were there for several decades before [redacted] created the urban forester position for the petitioner in 2005. The petitioner has not shown that his work as a forester has significantly increased or enhanced the forest's carbon capture or water filtration properties. The environmental benefits of trees and forests are not in dispute here. Nevertheless, if those benefits are inherent properties of trees, whether or not professionally managed, then the petitioner cannot claim credit, as a forester, for the intrinsic properties of the trees or for the benefits that the trees were already providing on their own, decades before his arrival.

The AAO finds that forestry, in the abstract, is at least potentially national in scope. The petitioner mentions, for example, "advanced principles of forestry." A forester who developed or improved such principles could have a national impact by disseminating the improved practices to other foresters on public and private lands. Therefore, contrary to the director's finding, the petitioner has met the second, "national scope" prong of the *NYSDOT* national interest test. This does not mean, however, that the petitioner's own work in this regard has been, or likely will be, national in scope.

The petitioner initially submitted various materials about [redacted] urban forestry program. These materials all appear to be internal [redacted] publications, with no evidence of wider reach. The record indicates that the petitioner contacted the [redacted] to nominate [redacted] and that the [redacted] that designation in 2008 (the inaugural year) and again in 2009. In terms of the importance or influence of this designation, the record does not establish that the [redacted] designation attracted significant notice outside of UCSD's own press releases. The 2009 press release stated:

> [redacted] launched in 2008 by the [redacted] and supported by a grant from Toyota, honors colleges and universities, and leaders of the campus and surrounding communities, for promoting healthy urban forest management.
>
> UC San Diego met the required five core standards of tree care and community engagement in order to receive the honor. These include establishing a campus tree advisory committee, evidence of a campus tree-care plan, verification of dedicated annual expenditures on the campus tree-care plan, involvement in an [redacted]

> observance, and the institution of a service-learning project aimed at engaging the student body.

According to the above information, the "five core standards" all relate to internal factors within [redacted], rather than wider engagement or influence on the field of forestry at large.

With respect to the [redacted], the document applies at the state level, with no evidence of wider implementation. Furthermore, the record does not show the extent of the petitioner's input into creating the protocol. The protocol identified four committees – [redacted] The petitioner served on the last of these, which was also the largest committee (with 84 members).

The initial submission contains a copy of an article from [redacted] quoting the petitioner regarding the benefits of trees. The author of the article [redacted] stated: "Other large universities could take a cue from UC – San Diego," but this does not show or imply that the petitioner's work has, in fact, influenced the efforts of foresters at "other large universities." Similarly, a [redacted] press release calling the petitioner's [redacted]' a model that can be replicated throughout the country" does not demonstrate that such replication has occurred, or is imminent. The possibility of imitation does not imply the certainty thereof.

On February 12, 2010, the director instructed the petitioner to submit evidence of his "influence on [his] field of employment as a whole." In response, the petitioner stated: [redacted] recognizes me as a leader" of [redacted]" To support this claim, the petitioner submitted a document showing the logo of the [redacted] describing [redacted] Despite the use of the [redacted] logo, it is clear that [redacted] itself provided the text of the document. There are repeated references to "our campus," "our goals" and what "we" are doing at [redacted] to further the project. The last section of the document falls under the heading [redacted] Therefore, the evidence indicates that [redacted] prepared the document using a template provided by [redacted] it is not evidence of recognition by the [redacted]

The director, in denying the petition, stated: "The petitioner has submitted a copious amount of evidence pertaining to his field of specialty, forestry. However, the record lacks evidence that the petitioner has had an impact on the field of forestry that is substantially greater than that of his peers." On appeal, the petitioner states:

> Both the credit given [redacted] by the [redacted] for [redacted] and the [redacted] recognition are an acknowledgment of my expertise and an indication of *my growing influence on my field of employment as a whole;* I am ***already*** an ***inspiration*** to many of my professional colleagues ***nationally***. . . .

> My work has been showcased as a model for others nationwide, indicating that my work has influenced the field of forestry as a whole.

The petitioner did not, however, submit objective evidence of this claimed influence. He has submitted a variety of evidence, and declared that it shows his influence, but this is not self-evident from the materials presented. The petitioner's repeated citation of information that [redacted] provided to the [redacted] as though it were praise from the [redacted] itself, undermines the petitioner's credibility when it comes to the source and significance of comparable information in the record.

Evidence that the petitioner has given some speeches on the subject of forestry indicates that the petitioner's work has, at times, extended outside of the [redacted] campus, but these occasional forays do not establish a pattern of sustained or significant impact or influence.

It may well be that the potential exists for the petitioner's forestry work at [redacted] to serve as a model for large-scale implementations outside the [redacted] but the record contains no evidence to show that the petitioner has already made his influence felt in this way. Speculation about the potential for future influence is not a sufficient basis for approval of the national interest waiver.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.